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9
10 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12
13 In the Matter of the First Amended Accusation
Against:

Case No. 800-2019-051618

14 **JESSICA LAINE PEATROSS, M.D.**
15 **12 Old Charlotte Hwy, Ste. 75**
Asheville, NC 28803-9420

FIRST AMENDED ACCUSATION

16 **Physician's and Surgeon's Certificate**
17 **No. C 139872,**

18 **Respondent.**

19
20 **PARTIES**

21 1. William Prasifka (Complainant) brings this First Amended Accusation solely in his
22 official capacity as the Executive Director of the Medical Board of California, Department of
23 Consumer Affairs (Board).

24 2. On or about December 21, 2015, the Board issued Physician's and Surgeon's
25 Certificate Number C 139872 to Jessica Laine Peatross, M.D. (Respondent). The Physician's and
26 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
27 herein and will expire on August 31, 2023, unless renewed.

28 *////*

JURISDICTION

3. This First Amended Accusation, which supersedes Accusation No. 800-2019-051618 filed on November 30, 2021, in the above entitled matter, is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2004 of the Code states:

The board shall have the responsibility for the following:

(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

(b) The administration and hearing of disciplinary actions.

(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

...

5. Section 2220 of the Code states:

Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter. The board shall enforce and administer this article as to physician and surgeon certificate holders, including those who hold certificates that do not permit them to practice medicine, such as, but not limited to, retired, inactive, or disabled status certificate holders, and the board shall have all the powers granted in this chapter for these purposes ...

6. Section 2227 of the Code states:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the board.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

1 (4) Be publicly reprimanded by the board. The public reprimand may include a
2 requirement that the licensee complete relevant educational courses approved by the
board.

3 (5) Have any other action taken in relation to discipline as part of an order of
4 probation, as the board or an administrative law judge may deem proper.

5 ...

6 **STATUTORY PROVISIONS**

7 7. Section 2234 of the Code, states:

8 The board shall take action against any licensee who is charged with
9 unprofessional conduct. In addition to other provisions of this article, unprofessional
conduct includes, but is not limited to, the following:

10 (a) Violating or attempting to violate, directly or indirectly; assisting in or
11 abetting the violation of, or conspiring to violate any provision of this chapter.

12 (b) Gross negligence.

13 (c) Repeated negligent acts. To be repeated, there must be two or more
14 negligent acts or omissions. An initial negligent act or omission followed by a
separate and distinct departure from the applicable standard of care shall constitute
repeated negligent acts.

15 (1) An initial negligent diagnosis followed by an act or omission medically
16 appropriate for that negligent diagnosis of the patient shall constitute a single
negligent act.

17 (2) When the standard of care requires a change in the diagnosis, act, or
18 omission that constitutes the negligent act described in paragraph (1), including, but
19 not limited to, a reevaluation of the diagnosis or a change in treatment, and the
licensee's conduct departs from the applicable standard of care, each departure
constitutes a separate and distinct breach of the standard of care.

20 ...

21 **OTHER RELEVANT STATUTORY PROVISIONS**

22
23 8. Section 120335 of the Health and Safety Code states:

24 (a) As used in this chapter, "governing authority" means the governing board of
25 each school district or the authority of each other private or public institution
responsible for the operation and control of the institution or the principal or
26 administrator of each school or institution.

27 (b) The governing authority shall not unconditionally admit any person as a
28 pupil of any private or public elementary or secondary school, child care center, day
nursery, nursery school, family day care home, or development center, unless, prior to

his or her first admission to that institution, he or she has been fully immunized. The following are the diseases for which immunizations shall be documented:

(1) Diphtheria.

(2) *Haemophilus influenzae* type b.

(3) Measles.

(4) Mumps.

(5) Pertussis (whooping cough).

(6) Poliomyelitis.

(7) Rubella.

(8) Tetanus.

(9) Hepatitis B.

(10) Varicella (chickenpox).

(11) Any other disease deemed appropriate by the department, taking into consideration the recommendations of the Advisory Committee on Immunization Practices of the United States Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians.

(c) Notwithstanding subdivision (b), full immunization against hepatitis B shall not be a condition by which the governing authority shall admit or advance any pupil to the 7th grade level of any private or public elementary or secondary school.

(d) The governing authority shall not unconditionally admit or advance any pupil to the 7th grade level of any private or public elementary or secondary school unless the pupil has been fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age.

(e) The department may specify the immunizing agents that may be utilized and the manner in which immunizations are administered.

...

(g) (1) A pupil who, prior to January 1, 2016, submitted a letter or affidavit on file at a private or public elementary or secondary school, child day care center, day nursery, nursery school, family day care home, or development center stating beliefs opposed to immunization shall be allowed enrollment to any private or public elementary or secondary school, child day care center, day nursery, nursery school, family day care home, or development center within the state until the pupil enrolls in the next grade span.

(2) For purposes of this subdivision, "grade span" means each of the following:

(A) Birth to preschool.

(B) Kindergarten and grades 1 to 6, inclusive, including transitional kindergarten.

(C) Grades 7 to 12, inclusive.

1 (3) Except as provided in this subdivision, on and after July 1, 2016, the
2 governing authority shall not unconditionally admit to any of those institutions
3 specified in this subdivision for the first time, or admit or advance any pupil to 7th
4 grade level, unless the pupil has been immunized for his or her age as required by this
5 section.

6 ...

7 9. Section 120370 of the Health and Safety Code states:¹

8 (a) (1) Prior to January 1, 2021, if the parent or guardian files with the
9 governing authority a written statement by a licensed physician and surgeon to the
10 effect that the physical condition of the child is such, or medical circumstances
11 relating to the child are such, that immunization is not considered safe, indicating the
12 specific nature and probable duration of the medical condition or circumstances,
13 including, but not limited to, family medical history, for which the physician and
14 surgeon does not recommend immunization, that child shall be exempt from the
15 requirements of this chapter, except for Section 120380, and exempt from Sections
16 120400, 120405, 120410, and 120415 to the extent indicated by the physician and
17 surgeon's statement.

18 (2) Commencing January 1, 2020, a child who has a medical exemption issued
19 before January 1, 2020, shall be allowed continued enrollment to any public or
20 private elementary or secondary school, child care center, day nursery, nursery
21 school, family day care home, or developmental center within the state until the child
22 enrolls in the next grade span.

23 For purposes of this subdivision, "grade span" means each of the following:

24 (A) Birth to preschool, inclusive.

25 (B) Kindergarten and grades 1 to 6, inclusive, including transitional
26 kindergarten.

27 (C) Grades 7 to 12, inclusive.

28 (3) Except as provided in this subdivision, on and after July 1, 2021, the
governing authority shall not unconditionally admit or readmit to any of those
institutions specified in this subdivision, or admit or advance any pupil to 7th grade
level, unless the pupil has been immunized pursuant to Section 120335 or the parent
or guardian files a medical exemption form that complies with Section 120372.

(b) If there is good cause to believe that a child has been exposed to a disease
listed in subdivision (b) of Section 120335 and the child's documentary proof of
immunization status does not show proof of immunization against that disease, that
child may be temporarily excluded from the school or institution until the local health
officer is satisfied that the child is no longer at risk of developing or transmitting the
disease.

¹ Effective January 1, 2016, through December 31, 2019, Health and Safety Code section 120370, subdivision (a), stated: "If the parent or guardian files with the governing authority a written statement by a licensed physician to the effect that the physical condition of the child is such, or medical circumstances relating to the child are such, that immunization is not considered safe, indicating the specific nature and probable duration of the medical condition or circumstances, including, but not limited to, family medical history, for which the physician does not recommend immunization, that child shall be exempt from the requirements of Chapter 1 (commencing with Section 120325, but excluding Section 120380) and Sections 120400, 120405, 120410, and 120415 to the extent indicated by the physician's statement."

COSTS

10. Section 125.3 of the Code states:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

...

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be *prima facie* evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

...

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

DEFINITIONS

11. Unprofessional conduct under Business and Professions Code section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming of a member of good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

12. Primary care providers and specialists follow national standards for pediatric vaccination practices and immunization recommendations from the Centers for Disease Control and Prevention ("CDC") issued through the Advisory Committee on Immunization Practices ("ACIP") in concert with several professional medical organizations. In addition, the American Academy of Pediatrics ("AAP") summarizes immunization recommendations in The Red Book.

1 13. Contraindications are conditions in a recipient that increase the risk for a serious.
2 adverse reaction.

3 14. Contraindications and precautions (which may be relative) are conditions under
4 which medical exemptions are appropriate.

5 15. Polio, or poliomyelitis, is a disabling and life-threatening disease caused by the
6 poliovirus. The virus spreads from person to person and can infect a person's spinal cord,
7 causing paralysis. Paralysis, in turn, can lead to permanent disability and death.

8 16. The MMR vaccine protects against measles, mumps, and rubella. Measles is highly
9 contagious and especially dangerous for babies and young children. It can lead to pneumonia,
10 lifelong brain damage, deafness, and death.

11 17. The DTaP vaccine protects against diphtheria, tetanus, and pertussis (whooping
12 cough). Diphtheria is a serious infection of the throat that can block the airway and cause severe
13 breathing problems. Pertussis is a respiratory illness with cold-like symptoms that lead to severe
14 coughing (the "whooping" sound happens when a child breathes in deeply after a severe coughing
15 fit). Serious complications can affect children under 1 year old, and those younger than 6 months
16 old are especially at risk. Teens and adults with a lasting cough might have pertussis and not
17 realize it, and could pass it to vulnerable infants.

18 18. The Tdap vaccine is a booster immunization given at age 11 that offers continued
19 protection from diphtheria, tetanus, and pertussis for adolescents and adults.

20 19. Meningitis is an inflammation (swelling) of the protective membranes covering the
21 brain and spinal cord. Bacterial meningitis can be deadly and requires immediate medical
22 attention.

23 20. Hepatitis A is a serious liver disease. In rare cases, hepatitis A can cause liver failure
24 and death. Hepatitis B is a liver disease that can cause mild illness lasting a few weeks, or it can
25 lead to a serious, lifelong illness.

26 21. The Hib vaccine protects against *haemophilus influenzae* type b, a disease that can
27 cause serious illness and death in babies and children younger than 5 years old. Hib can cause
28 severe infections of both the lining of the brain and spinal cord (meningitis) and the bloodstream.

22. Varicella, also known as chickenpox, is a very contagious disease caused by the varicella-zoster virus (VZV). It causes a blister-like rash, itching, tiredness, and fever.

Chickenpox used to be very common in the United States. Serious complications of chickenpox can lead to hospitalization and death.

23. Influenza (flu) is a contagious respiratory illness caused by influenza viruses that can cause mild to severe illness. Serious outcomes of flu infection can result in hospitalization or death, particularly in older people, young children, and people with certain health conditions.

24. The pneumococcal vaccine ("PCV") helps prevent pneumococcal disease, which is any type of illness caused by *Streptococcus pneumoniae* bacteria. Pneumococcal disease is contagious and can lead to various health problems, including serious infections in the lungs, lining of the brain and spinal cord, and blood. Pneumococcal disease is especially dangerous for babies, older adults, and people with certain health conditions.

25. The HPV vaccine protects against the human papillomavirus, a very common virus that can lead to cancer.

FACTUAL ALLEGATIONS

26. A history of eczema, asthma and/or allergies is not considered a contraindication or precaution for routine immunizations by the CDC or the AAP.

27. A family history of allergies, immune cancer, and/or a sibling with possible adverse effects following immunization are not considered contraindications or precautions for routine immunizations by the CDC or the AAP.

28. Temporary vaccine exemptions may be appropriate when the underlying contraindication or precaution is impermanent.

29. There is no ingredient common to all vaccines that would serve as a contraindication to all vaccines.

30. Skin testing prior to the administration of routine vaccines is not recommended by the CDC or the AAP for patients without a history of allergy to specific vaccines or components.

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1 Patient A:²

2 31. At all relevant times during her care and treatment of Patient A, Respondent shared a
3 practice with a naturopathic doctor ("the Practice").

4 32. Patient A, a male child, was born in March 2018. His first consultation at the Practice
5 was with the naturopathic doctor ("the ND") on or about October 19, 2018 (aged approximately
6 six months), by which time Patient A had not yet received any vaccinations.

7 33. According to a consultation note in Patient A's chart dated October 19, 2018,
8 Patient A had a sibling who was approximately three years older than Patient A. Patient A's
9 older brother had reportedly experienced adverse reactions to vaccines, including "[r]egression,
10 lost his language, eye contact, and had loud noise sensitivity/anxiety at 15 months (after
11 MMR/Chicken Pox/Dtap). Also has an egg allergy and seasonal allergies and eczema."
12 Patient A's grandfather "had cancer, auto immune diseases, etc."

13 34. The consultation note also documents a family medical history of "food allergies,
14 seasonal allergies, asthma, ... Autism, Learning Disabilities, speech impairment, seizures, cancers
15 (lymphoma/leukemia), immune disorders."

16 35. Patient A was diagnosed with eczema and gastro-esophageal reflux disease without
17 esophagitis.

18 36. Patient A's parent wanted a medical exemption from vaccinations for both boys.

19 37. On or about November 27, 2018, the ND sent an email to Respondent with the
20 subject heading, "Medical Exemption Letter," containing the following message:

21 Hi there, (just sent a message regarding the other sibling)

22 I am talking to a mom with 2 kids - with clear vaccine injury from the older
23 boy. Talking normally and total loss of speech after MMR and Dtap combo.:(

24 Older boy, [] 3 yo, only needs one more booster of MMR.

25 Younger boy, [Patient A] 6 months, has zero vaccines.

26 Mom wants an exemption for both. She is in NO rush. I think she absolutely
27 warrants it.

28 Here is the proof she would gather for us:

² Patient names are known to all parties but are not disclosed to protect patient privacy.

1. For [older brother] get documentation from the audiologist about speech regression
2. For [older brother] get documentation from allergist of egg allergy (ask for both IGE and IGG if possible) - will have photo of epic [sic] pen
3. Proof of grandfathers lymphoma died young at 58 from immune cancer
4. [Patient A] has eczema documentation.
5. Mom gets hives randomly and history of severe eczema

Letter attached

38. On or about December 19, 2018, Respondent provided the following vaccine exemption for Patient A:

[Patient A, DOB 3 /XX/18] has a personal history of eczema and a strong family history of allergies, immune cancer and a sibling who had a negative reaction to vaccines. Symptoms post vaccine included symptoms of speech regression, stimming, head banging, tics, and loss of eye contact. Given his personal history as well as the family history, I feel he is at high risk of an adverse reaction to vaccines. If there is an imminent medical threat in the community, we can consider a single vaccine in a controlled medical environment. However, the benefits to him and the community would have to greatly outweigh his very real personal risk. I would recommend skin testing to those vaccines and all of their additives prior to even considering this. This medical exemption for vaccines is permanent. It includes, but is not limited to, DtaP, TdaP, Polio, MMR, Varicella, Hepatitis B and A, Influenza, HIB, PCV, HPV, and Meningitis and includes all vaccines currently on the CDC recommended vaccine list and all vaccines added to the list in the future.

Patient B:

39. On or about August 30, 2017, Respondent provided the following vaccination exemption certificate to Patient B:

[Patient B], birthdate 5/XX/2005, is here being seen for a vaccine exemption. He has medical issues such as severe asthma and allergies that do exempt him from the TDAP and other vaccinations at this time. This can be re-evaluated when he enters high school. Please excuse him from the vaccines at this time. If there are any questions, I can be reached at ... Thank you for your understanding.

40. The exemption does not mention anaphylaxis or a severe allergy to a previous dose of any vaccine or to any vaccine component, nor is any such consideration supported by Respondent's medical records for Patient B.

41. Respondent's medical records for Patient B do not disclose any indication of an impermanent contraindication or precaution.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

3 42. Respondent Jessica Laine Peatross, M.D., is subject to disciplinary action under
4 sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that she
5 committed gross negligence in her care and treatment of Patient A and Patient B, as more
6 particularly alleged hereinafter:

7 **Patient A:**

8 (a) Respondent provided Patient A a medical vaccination exemption for reasons which do
9 not support such an exemption.

10 (b) Respondent provided Patient A a medical vaccination exemption to all vaccines when
11 there is no ingredient common to all vaccines that would serve as a contraindication to all
12 vaccines.

13 (c) Respondent provided Patient A a medical vaccination exemption that was permanent,
14 based on reasons which do not support such an exemption.

15 (d) Respondent provided Patient A a medical vaccination exemption to all future vaccines
16 without knowing the risk of infection and consequences from future pathogens and/or the
17 composition of future vaccines and/or the potential side effects and benefits of future vaccines.

18 (e) Respondent recommended skin testing for Patient A for reactions to vaccines and
19 additives in the absence of any documented allergy concerns to specific vaccines or vaccine
20 components.

21 **Patient B:**

22 (f) Respondent provided a medical vaccination exemption to Patient B for reasons which do
23 not support such an exemption.

24 (g) Respondent provided Patient B a medical vaccination exemption to all vaccines when
25 there is no ingredient common to all vaccines that would serve as a contraindication to all
26 vaccines.

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28 ////

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Repeated Negligent Acts)**

3 43. Respondent Jessica Laine Peatross, M.D., is further subject to disciplinary action
4 under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that
5 she committed repeated negligent acts in her care and treatment of Patient A and Patient B, as
6 more particularly alleged in, as more particularly alleged hereinafter:

7 (a) Paragraphs 26 through 42, above, are hereby realleged and incorporated by this
8 reference as if fully set forth herein.

9 (b) Respondent provided Patient B a temporary medical vaccine exemption in the absence
10 of any temporary or impermanent underlying contraindication or precaution.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(General Unprofessional Conduct)**

13 44. Respondent Jessica Laine Peatross, M.D., is further subject to disciplinary action
14 under section 2234 of the Code in that she has engaged in conduct which breaches the rules or
15 ethical code of the medical profession, or conduct that is unbecoming to a member in good
16 standing of the medical profession, and which demonstrates an unfitness to practice medicine, as
17 more particularly alleged in paragraphs 26 through 43, above, which are hereby realleged and
18 incorporated by this reference as if fully set forth herein.

19 **PRAYER**

20 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
21 and that following the hearing, the Medical Board of California issue a decision:

22 1. Revoking or suspending Physician's and Surgeon's Certificate Number C 139872,
23 issued to Respondent Jessica Laine Peatross, M.D.;

24 2. Revoking, suspending or denying approval of Respondent Jessica Laine Peatross,
25 M.D.'s authority to supervise physician assistants and advanced practice nurses;


26 3. Ordering Respondent Jessica Laine Peatross, M.D., if placed on probation, to pay the
27 Board the costs of probation monitoring;

28 ////

1 4. Ordering Respondent Jessica Laine Peatross, M.D., to pay the Medical Board of
2 California the reasonable costs of the enforcement of this case, pursuant to Business and
3 Professions Code section 125.3; and

4 5. Taking such other and further action as deemed necessary and proper.

5
6 DATED: JAN 11 2022



WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant